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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/682,048	07/13/2001	Walter L. Peck	peck	peck 2678	
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SUITE C-2	Nom A v E, M. W.	ART UNIT	PAPER NUMBER		
WASHINGTON, DC 20007			3644		
			DATE MAILED: 12/07/2005		

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Estatistical or time may be shallowed to be previously in no event, however, may analy be simply filled. If NO pared for may be specified above, the maximum altuknory pared will apply and will expire SIX (5) MONTH'S from the mailing date of this communication. Fealurs to reply within the sit or desended period for riginy is specified above, the maximum altuknory pared will apply and will expire SIX (5) MONTH'S from the mailing date of this communication. Fealurs to reply within the sit or desended period for riginy is specified above, the maximum altuknory pared will apply and will expire SIX (5) MONTH'S from the mailing date of this communication. Fealurs to reply within the sit or desended period for riginy ill. by statutor, each the period will apply and value of the communication, even it timely filled, may reduce any search pared to the communication, even it timely filled, may reduce any search pared to the communication, even it timely filled, may reduce any search pared to the communication, even it timely filled, may reduce any search pared to the communication, even it timely filled, may reduce any search pared to the communication of the communication of the source of the communication of the source of the mailing date of this communication. Status 1) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1 and 12 is/are pending in the application. 4) Claim(s) 1 and 12 is/are allowed. 6) Claim(s) 1 and 12 is/are rejected. 7) Claim(s) 1 is/are allowed. 8) Claim(s) 1 and 12 is/are rejected. 8) The above claim(s) 1 is/are rejected. 9) The specification is objected to by the Examiner. 10) The drawing(s) filled on 1 is/are: a) accepted or b) objected to by the	Office Action Summary		Applica	Application No. Applicant		t(s)			
Bet C. Hayes 3644			09/682,	048	PECK, WALTER L.				
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extentions of time may be available under the provision of 37 CR1 13(0), in no event, however, may a reply be timely filled. If NO period for reply is specified above, the maximum addulory pained will apply and will eaple SIX (5) MONTHS from the malting date of this communication. Fealure for reply within the sort or extended period for righy will, by statutic, cambe the specification become BANDONED (5) US U.S. 5, 133). Any reply received by the Office lister than the months after the malting date of this communication, even if timely filled, may reduce any seating plants in an alphaneur. Sets 37 CR1 1,70(1). Status 1) Sesponsive to communication(s) filled on 98 August 2005. 20			Examin	er	Art Unit				
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Application/Control Number: 09/682,048 Page 2

Art Unit: 3644

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

- 2. Claims 1 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- 3. Claim 1 recites the limitation "an indentation on said at least two vertical supports" at line 4, which is ambiguous at best, as it is not clear how there can be a single indentation on at least two separate supports given the current level of understanding in physics. Examiner suggests adding --each of-- between "on" and "said" or some such phrasing. Further, similar is true for the recitation "a ridge" at line 10, with similarly suggested correction. For purposes of examination, this is how the claim will be further treated on the merits there is one each.
- 4. Claim 12 recites the limitation "said bend has sufficient width to accommodate a foot" at line 1. First, the recitation that an element is "sufficient" to perform a given function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In this case, if a potential user is able to have a foot accommodated on the width of the bend, the prior art anticipates or obviates the claimed invention. Second, this 'limitation' is incomprehensible as the size and shape of the feet of potential 'users' are as multitudinous as there are potential user's the Earth's population currently being an estimated 6.5 billion people and as varied the feet of those roughly 6.5 billion people. And, that's presuming that ONLY human users are intended, which is not so stated.

Application/Control Number: 09/682,048 Page 3

Art Unit: 3644

Claim Rejections - 35 USC § 103

- 5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 6. Claims 1 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillestad in view of US Patent No. 3,397,485 to Peterson.
- Re claim 1, Hillestad discloses the invention substantially as claimed including a plant stand 10 comprising: at least two vertical supports 11 13; an indentation 11a 13a on each of the supports 11 13; a bend the crest above 11a 13a at a lowermost end of the support 11 13; at least one ring 15 attached to the supports 11 13; and a ridge 15a c on the ring 15, the ridge 15a c protruding from the ring 15 and in communication with the indentation 11a 13a; and, wherein the at least two vertical supports 11 13 are arranged to slide along the at least one ring 15 while remaining attached to said at least one ring, so that the at least two vertical supports 11 13 are can touch one another*. However, Hillestad does not disclose the bend being below the indentation.
- *Regarding the functional recitation beginning "wherein" and ending "another", it has been held that the functional "whereby" ("wherein") statement does not define any structure and accordingly cannot serve to distinguish see *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957). In this case, the supports are capable of sliding along the ring while remaining at least as attached as they are in Fig. 1, for example, thus, allowing the at least two supports touching capability.

Application/Control Number: 09/682,048

Art Unit: 3644

Page 4

9. Peterson teaches a bend 13 - 16 at a lowermost end of a plant stake in the same field of endeavor for the purpose of inserting the stake into an earthen surface, best seen in FIG. 2, shown in phantom. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hillestad to include the bend as taught by Peterson in order to insert the stand into earth.

10. Re – claim 12, Hillestad in view of Peterson discloses the claimed invention as applied to claim 1 above, including the bend having sufficient width to accommodate a foot as claimed – se rejection under 112, 2nd paragraph above, for example.

Response to Arguments

11. Applicant's arguments filed 08 AUG 05 have been fully considered but they are not persuasive. See above regarding how the amended claim is rejected.

Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902. The examiner can normally be reached Monday through Friday from 5:30 am to 2:00 pm, Eastern Standard Time.

The Central FAX Number is 571-273-8300.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (571) 272 – 7045.

bh

2-Dec-05

Supervisory patent examiner